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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

SEPEHR MASHHOUD AND MARILYN  
PEREZ,

Plaintiffs and Appellants,

v.

QUALITY LOAN SERVICE CORP. ET  
AL.,

Defendants and Respondents.

A153913

(San Mateo County  
Super. Ct. No. 17CIV01975)

Appellants Sepehr Mashhoud and Marilyn Perez (appellants) appeal from the judgment entered by the trial court after it sustained without leave to amend a demurrer filed by respondent JPMorgan Chase Bank, N.A. (respondent). We affirm.

According to appellants' first amended complaint (FAC), appellant Mashhoud obtained in September 2006 a \$3.04 million loan (Loan) from Washington Mutual bank on property located in Hillsborough, California. In September 2008, respondent acquired all of Washington Mutual's assets. In March 2009, respondent instituted foreclosure proceedings on the Hillsborough property through Quality Loan Service Corp. (Quality). The property was sold in a December 2009 foreclosure sale.

In September 2017, appellants filed suit against respondent and Quality, contending the foreclosure sale was unlawful. Respondent filed a demurrer and appellants filed the FAC later the same month. The FAC is not very clear, and neither is appellants' brief on appeal, but the FAC appears to allege, among other things, that

respondent lacked the right to foreclose because Washington Mutual had securitized the Loan. Appellants allege they discovered in October 2016 through a “Mortgage Securitization Audit and Analysis Report” that “there was no direct chain of title in which [respondent] validly acquired beneficial rights, title and interests in Plaintiffs’ Note and Deed of Trust.” The FAC alleges causes of action for wrongful foreclosure; fraud by deceit; violation of Civil Code section 2924, subdivision (a)(5) (relating to notice of foreclosure sales); violation of Civil Code section 2924, subdivision (a)(6) (relating to who may initiate foreclosure proceedings); violation of Business and Professions Code section 17200; and quiet title.

In November 2017, respondent demurred to the FAC on the bases that all the causes of action were barred by the applicable statutes of limitations and that each of the causes of action failed to state facts sufficient to state a claim for various reasons. In January 2018, the trial court sustained the demurrer without leave to amend. The court held the causes of action in the FAC were barred by the applicable statutes of limitations, and the discovery rule did not apply to toll the limitations periods.

In their opening brief on appeal, appellants contend the trial court erred in concluding their claims are time barred. Among other things, they argue they had no reason to suspect the foreclosure proceedings were *unlawful* and, accordingly, no obligation to conduct an investigation at the time of the foreclosure sale. (See *Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 806–808.) Respondent argues that the trial court correctly concluded the claims are time barred, but also that the FAC fails to state a claim for a range of other reasons stated in the demurrer. Appellants failed to file a reply brief.

It is well-established that we review an order sustaining a demurrer de novo and “[w]e affirm if any ground offered in support of the demurrer was well taken.” (*Mendoza v. Town of Ross* (2005) 128 Cal.App.4th 625, 631.) Although appellants were not obligated to file a reply brief (*Ellerbee v. County of Los Angeles* (2010) 187 Cal.App.4th 1206, 1218, fn. 4), we will not endeavor to respond to respondent’s arguments on appellants’ behalf (*Alvarez v. Jacmar Pacific Pizza Corp.* (2002) 100 Cal.App.4th 1190,

1206, fn. 11). In effect, appellants have forfeited any argument that respondent's demurrer was not properly sustained on grounds other than the statute of limitations. (*Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784–785.) Because this court would be required to affirm even if the trial court erred in its analysis on the statute of limitations issue, it is unnecessary for this court to address that issue on appeal.

The trial court's judgment is affirmed. Costs on appeal are awarded to respondent.

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SIMONS, J.

We concur.

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JONES, P.J.

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NEEDHAM, J.

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